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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,192	02/19/2002	Gary Handwerker	6081-005	7298

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EXAMINER

LONEY, DONALD J

ART UNIT	PAPER NUMBER
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1794

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01/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/079,192	Applicant(s) HANDWERKER, GARY	
	Examiner Donald Loney	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 28-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide support for the first and second flexible films being "undulating" per claims 28, 30, 34 and 37. The specification at page 9, lines describes a film with insulative pockets 18, but does not disclose the film as being undulating. Figures 2-4 may be somewhat undulating, however, this is a cross sectional view therefore the film is not actually undulating. It is a film as shown in figure 1, wherein pockets 18 are formed over the entire surface in order

to form a bubble type film when laminated to another flat layer. In addition, undulating could be referring to a corrugated film which the applicant does not have support for. The specification fails to provide support for the "heat reflective elements dispersed throughout" a film per claims 28, 29, 31, 34, 35 and 37. The specification, at page 10, lines 8-11 disclose a "heat reflective material" in the films, however, that is different than "elements". The term "elements" could encompass other things (i.e. mirrors) not supported by the specification. The specification fails to provide support for the "second moisture impervious film having an additional reflective coating thereon per claim 29. From page 10, lines 8-11 the film can have either a reflective material dispersed therein or a coating thereon, but not both. Claim 28 already has the "elements" dispersed therein, therefore, they cannot be coated too as per claim 29. It would have to be one or the other. The specification fails to provide support for the "nonstick" recitation in claim 33. On page 15, lines 12-15 of the specification the surface is disclosed as smooth and remains some what slippery when wet, but not that it is a nonstick surface.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 28-31 and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Hines et al (3577305), Edgel (4579756) or Hunter (5792539) in view of the Applicant's discussion of the prior art (ADPA) or Kern (4544600).

All of the primary references teach a first and second moisture-impervious films with a first and second undulating film applied thereto per claims 28 and 34. This forms a structure of two bubble type laminates facing one another as shown in applicant's figure 1 and 2. See figures 1-3 in Hines showing outer layers 22, 26 and the spaced insulative intermediate layers 30 which have cells 32 formed therefrom sealed around the edge 36' thereof. The outer layers are disclosed as a metal coated plastic film (column 3, lines 32-40). Refer to figures 2 and 11 in Edgel showing outer layers 11, 12 and the spaced insulative intermediate layers 13 and the edge seal around each section 10 formed from the blanket. The outer layers are disclosed as a metal coated plastic film (column 4, lines 1-12). Refer to figures 1-5 and 12 in Hunter showing outer layers 20, 30, 24, 34 and the spaced insulative intermediate layers 12, 14 and the edge seal 42 around the edge of the blanket. The outer layers are disclosed as a metal coated plastic film (column 10 line 38 through column 11, line 36). The difference between the claimed invention of independent claims 28 and 34 is that the prior art fails to teach the outer bottom layer as having heat reflective "elements" dispersed throughout the polymer,

they teach foil coated plastics. At least Hines discloses that the reflective layer can be a metalized plastic film, a metal foil or other reflective layers (see column 3, lines 35-40).

However, from the ADPA on page 10, lines 12-18 and the applicant's comments filed September 20, 2006 (page 9, third full paragraph) it is known that reflective layers can be formed on either metal coated plastics or plastics with metal dispersed therein. Kern also discloses it is known to include metal particles in a plastic film in order to provide reflectivity thereto. See column 1, lines 9-15 and column 2, lines 18-21.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one reflective layer for another (i.e. plastic with dispersed material versus coated plastic) as the outer layer, as taught to be known by the ADPA and Kern, motivated by the fact the primary references teach the outer layer to be reflective. With regards to claims 30, 31 and 35 it would be obvious to include reflective "elements" in these other layers for the same reasons it is included in the original outer film of claims 28 and 34. With regards to claim 33, the recitation to smooth is a mere relative term which does not distinguish from the prior art. With regards to claim 38 which includes an additional bubble layer it would have been obvious to one of ordinary skill in the art to include another layer for the same purpose the first two bubble layers were used which would increase the insulating effect of the blanket.

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Hines et al (3577305), Edgel (4579756) or Hunter (5792539) in view of the Applicant's

discussion of the prior art (ADPA) or Kern as applied to claims 28-31 and 33-37 above, and further in view of Sheridan (5011743).

The combination of the primary references disclose the invention substantially as recited except for the top layer being dark in color. See 35 USC 103 rejection above.

Sheridan et al teaches that one can apply a black coating to desired sections of an enveloped heat insulating pad containing spaced interior elements in order to improve heat radiating characteristics of the pad. Refer to the Abstract and column 3, lines 17-44.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary references to provide a black layer thereon, as taught by Sheridan, in order to improve the heat radiating means thereof motivated by the fact that this layer would function the same as the applicants' dark layer.

8. Claims 28-31 and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Brockhaus (4535828), Handwerker (5549956) or WO 98/10216 to Aanestad in view of the applicant's discussion of the prior art ADPA or Kern.

All of the primary references teach a first and second moisture-impervious films with a first and second undulating film applied thereto per claims 28 and 34. This forms a structure of two bubble type laminates facing one another as shown in applicant's figure 1 and 2. Brockhaus teaches two bubble layers 43 contained between two outer layers 45. Figure 1 shows complete encapsulation of the bubble layers. A foil layer may be applied between the bubble layers and/or be applied to the skin layers. This would

then read upon the embodiments of both the outer layers and/or the insulative bubble layer(s) having a reflective layer thereon. Refer to figures 1 and 2C along with column 2, lines 12-60, column 4, lines 44-47 and column 5 lines 23-48. WO 98/10216 to Aanestad teaches insulation that contains two outer layers (16 or 20 and 18 or 22), two bubble insulating layers (10, 12) there between with reflective layers (16, 18) on what can be considered either the bubble layers or outer layer when not looking at layers 16 and 18 as outer layers. Refer to the Figure, Abstract and page 11, line 32 through page 14, line 2 along with the claims. The reference contains layers that would read upon the two bubble type layers facing one another per claims 28 and 34. Handwerker teaches an insulation blanket with two inner bubble layers (16, 30) enveloped by two outer layers (12, 14) wherein a reflective layer(s) (18,32) is/are located between (i.e., on both the outer and bubble layer) the bubble layers and outer layers which is sealed at the edge thereof. Refer to Fig. Nos. 4-6 along with the corresponding text to the numbers referred to above. Handwerker layers 12,18,16,34,30,32 and 14 are equivalent to Aanestad layers 20,16,10,14,12,18 and 22 respectively as discussed above, except for layer 34 being a foil in Handwerker and a plastic film in Aanestad. Therefore, the layers apply to the claims as explained above just using the reference numbers in Handwerker that equate to Aanestad. The difference between the claimed invention of independent claims 28 and 34 is that the prior art fails to teach the outer bottom layer as having heat reflective "elements" dispersed throughout the polymer, they teach foil coated plastics. At least Handwerker discloses that the reflective layer can be aluminum foil or like metallic reflective materials (see column 3, lines 333-36).

However, from the ADPA on page 10, lines 12-18 and the applicant's comments filed September 20, 2006 (page 9, third full paragraph) it is known that reflective layers can be formed on either metal coated plastics or plastics with metal dispersed therein. Kern also discloses it is known to include metal particles in a plastic film in order to provide reflectivity thereto. See column 1, lines 9-15 and column 2, lines 18-21.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary references to substitute one reflective layer for another (i.e. plastic with dispersed material versus coated plastic) as the outer layer, as taught to be known by the ADPA or Kern, motivated by the fact the primary references teach the outer layer to be reflective. With regards to claims 2, 4 and 7 that the layers are fixed to one another, it would be obvious to one of ordinary skill in the art to fix components together in order to keep them from moving relative to one another. With regards to claims 30, 31 and 35 it would be obvious to include reflective "elements" in these other layers for the same reasons it is included in the original outer film of claims 28 and 34. With regards to claim 33, the recitation to smooth is a mere relative term which does not distinguish from the prior art. With regards to claim 38 which includes an additional bubble layer it would have been obvious to one of ordinary skill in the art to include another layer for the same purpose the first two bubble layers were used which would increase the insulating effect of the blanket. With regards to the unsplit limitations of claim 34 with respect to Brockhaus, it would have been obvious to one of ordinary skill in the art to omit an element or its intended function as a matter of obvious design choice. See *In re Karlson*, 136 USPQ 184 (CCPA 1963).

9. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Brockhaus (4535828), Handwerker (5549956) or WO 98/10216 to Aanestad in view of the applicant's discussion of the prior art ADPA or Kern as applied to claims 28-31 and 33-37 above, and further in view of Sheridan (5011743).

The combination of the primary references disclose the invention substantially as recited except for the top layer being dark in color. See 35 USC 103 rejection above.

Sheridan et al teaches that one can apply a black coating to desired sections of an enveloped heat insulating pad containing spaced interior elements in order to improve heat radiating characteristics of the pad. Refer to the Abstract and column 3, lines 17-44.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary references to provide a black layer thereon, as taught by Sheridan, in order to improve the heat radiating means thereof motivated by the fact that this layer would function the same as the applicants' dark layer.

Response to Arguments

10. Applicant's arguments filed October 31, 2007 have been fully considered but they are not persuasive. The applicant argues that the specification provides support for the "undulating" limitation in claim 1 as shown in figure 2. However, as previously stated by the examiner this is a cross sectional view on the film is really not undulating in nature. If the applicant includes the "in cross section view" than that would have proper support. However, the examiner does not believe this is the intended structure of the film. The film has a plurality of dimples in it that in cross section appear as undulating, however,

the film is not actually undulating itself. This could encompass corrugated structures not disclosed by the applicant. The applicant argues that the specification provides support heat reflective elements in that it discloses flecks of aluminum or other heat reflective flecked material. However, this does not provide support for elements as indicated above. The applicant argues that the specification does not contain any exclusive requirement for the heat reflective material being dispersed or as a coating therefore support for both the dispersed and coated film. However, as indicted above the specification discloses that one or the other is done to provide the reflective properties and that the specification does not provide support for both being done to the film as is recited in the instant claims. The applicant argues that the "non-stick" limitation has support in the fact that the specification states the surface is smooth as to not adhere to the curing concrete. However, this does not support the broader recitation that could include other things not supported by the specification. The examiner is not reading things into the specification as indicted by the applicant. Rather, the applicant's use of terminology not specifically disclosed in the specification is leading to this rejection above. The examiner suggests including the terminology the applicant themselves refers to in the specification for support of the alternative language used by the applicant in the claims in order to overcome this rejection of this alternative language the examiner does not believe is supported by the specification. The applicant argues that none of Hines, Edgel, Hunter, Brockhaus, Handwerker and Aanestad disclose the open spaces in their structure. However, by the very nature of them disclosing the two layers as a bubble layer there would be at least spaces where there are no bubbles in

the films. For example, there is a space between the sheets at 34 (where the bubble film contacts the flat sheet 22) in figure 2 in Hines. The applicant argues that Hines, Edgel and Hunter do not indicate that their blanket is reflective even though they do disclose aluminum or metallic foil layers present. However, as indicated by the applicant on page 7, lines 24 and 25 in the response filed October 31, 2007 these layers may be reflective. Therefore, since they are the some of the same materials used by the applicant (i.e. aluminum film or material) they are inherently reflective. The applicant argues that there would be no motivation to combine Hines, Edgel or Hunter with Kern or the applicants discussion of the prior art (ADPA) or combine Brockhaus, Handwerker or Aanestad with Kerns or the ADPA since the primary references disclose films and not elements dispersed throughout the film. The examiner does believe there is motivation to combine the references since the primary references teach metal films on the layers that provide reflective properties and the secondary references disclose other known ways to provide this feature to films (i.e. disperse particles therein). This would merely involve substituting one known way of imparting reflectivity to a film with another known way.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Donald J. Loney/
Primary Examiner
Art Unit 1794

DJL;D.Loney
01/22/08